

Terms & Conditions of Sale

1. GENERAL No representation of any kind has been made by us, except as set forth herein; this agreement conclusively supersedes all prior writings and negotiations with respect thereto. Any action for breach of contract must be commenced within one year after the cause of action has accrued. Our terms and conditions are subject to change without notice. Any order having a value of less than \$100.00 shall be invoiced at \$100.00.

2. ACCEPTANCE OF ORDERS All orders should be made out and submitted to New York Air Brake Corporation ("NYAB") at Watertown, New York 13601, and shall be subject to acceptance or rejection in whole or in part by us. Our sale to you will be solely upon the terms and conditions set forth herein. They supersede and reject any conflicting terms and conditions of yours, any statement of yours to the contrary notwithstanding. Exceptions to any of our terms and conditions must be contained in a written or typed (not printed) statement received from you and are binding upon us only if accepted by us in writing and signed by an authorized officer.

3. PRICE Prices shown in our current price list or otherwise obtained from us are quotations only, and are subject to change without notice. Prices in accepted orders are firm for thirty (30) days from the date of acceptance, unless Purchaser changes its specifications after such acceptance, in which event Purchaser agrees that NYAB may change the price accordingly. Any price so changed shall remain firm for thirty (30) days after the date of change.

4. TAXES Prices listed or quoted do not include any present or future sales, use, excise or similar taxes which will be added where applicable, unless you provide us with a tax exemption certificate acceptable to the appropriate taxing authorities.

5. SHIPPING POINT AND TRANSPORTATION Price listed, quoted or billed shall be Ex Works Watertown, New York, except for Spare Maintenance Parts. Such parts will be Ex Works Watertown, New York, but with transportation charges allowed to the Continental U.S. destination on the basis of the lowest cost common carrier. Title to all items passes to the customer at the Ex Works point, notwithstanding any prepayment or absorption of transportation charges by us. The term "Ex Works" throughout this document shall have the meaning ascribed by Incoterms 2000.

6. PAYMENT TERMS Invoices are due and payable in cash in United States of America funds 30 days from the date of invoice unless otherwise agreed to by us in writing. Partial shipments may be made at our option and pro rata invoices will be rendered for partial shipments. If customer shall directly or indirectly delay shipments of materials completed by us, we reserve the right to regard date of completion as date of shipment and require payment of the full price thereof by the customer within 30 days thereafter. Completed materials shall be held at the customer's cost and risk. Starting from the date of the invoice, for each thirty (30) days, or part thereof, after such date that an invoice remains unpaid, Purchaser shall pay interest on the unpaid balance at a rate of one and one-half percent (1 ½ %) per month or the maximum rate allowed by law, whichever is lower.

Unless credit has been established with NYAB, cash payment must accompany each order. NYAB shall make the final decision on credit worthiness.

If Purchaser fails to make any payment when due, in addition to all other sums payable hereunder, Purchaser shall pay NYAB the reasonable costs and expenses incurred by NYAB in connection with any actions taken to enforce collection of such unpaid amounts and to protect NYAB's rights hereunder, whether by legal proceedings or otherwise, including without limitation reasonable attorneys' fees, court costs, and other expenses.

If Purchaser is responsible for any delay in shipment, NYAB may treat the date of completion of the goods as the date of shipment for purposes of invoicing and Purchaser's obligation for payment. Completed goods shall be held at Purchaser's risk and cost and NYAB may bill Purchaser for reasonable storage and insurance expenses.

7. TAXES Prices exclude all duties, taxes or other governmental charges which are, or hereafter may be, imposed upon the sale or use of the goods. All such duties, taxes or other charges paid by NYAB shall be for Purchaser's account. Any exemption claimed by Purchaser from the application of such duties, taxes or other charges must be plainly designated on the face of purchase orders placed with NYAB and such orders must be accompanied by applicable exemption certificates.

8. ERRORS IN SHIPMENT OR DAMAGES A claim for error or shortage in shipment must be made to NYAB within 30 days after receipt and must be accompanied by the papers or documents necessary to substantiate it. ALL RISK OF LOSS OR DAMAGE IN TRANSIT SHALL BE ON PURCHASER AND ALL CLAIMS FOR LOSS OR DAMAGE IN TRANSIT OR FOR NON-DELIVERY SHALL BE MADE AND PROSECUTED BY PURCHASER AGAINST THE CARRIER.

9. CANCELLATION OF ORDERS Orders may be cancelled only with our written consent and upon payment of reasonable and proper cancellation charges (as determined by us). Goods may be returned only when specifically authorized by us; you will be charged for placing returned goods in saleable condition, and for any sales expenses incurred by us, plus a restocking charge and any outgoing and incoming transportation costs paid by us.

10. DELIVERY Delivery and shipment dates are estimated dates only. In estimating such dates, no allowance has been made nor shall we be liable for delay in delivery or failure to manufacture due to causes beyond our reasonable control, such as acts of God, acts of the government, strikes, war, delays of carriers, and inability to obtain necessary labor, material or manufacturing facilities. Claims by you for loss or damage incurred due to delay, however caused, shall be waived upon receipt by you of the material Ex Works point of shipment. We shall not be liable for any damages or penalties whatsoever whether direct or indirect, special, incidental or consequential, resulting from our failure or the failure of our suppliers to perform or delay in performing unless otherwise agreed in writing by an authorized officer.

11. SECURITY INTEREST Purchaser grants NYAB a first priority purchase money security interest in the goods supplied pursuant to the terms hereof for all amounts owing by it to NYAB. Purchaser agrees to execute any documents (including Uniform Commercial Code financing statements) relating to said goods as may be requested by NYAB and hereby authorizes NYAB to file such financing statements without Purchaser's signature thereon.

12. REJECTION Purchaser's right to reject any goods supplied hereunder is conditioned upon Purchaser giving NYAB a written notice of rejection setting forth the basis thereof within thirty (30) days after delivery of the goods to Purchaser. Failure to give such notice within such time constitutes acceptance of such goods.

13. WARRANTY NYAB equipment and parts are warranted to be free from defects in workmanship and material, under normal and proper use, for the following periods and subject to the terms herein: (a) Computer Controlled Brake Systems: Three years commencing on the locomotive in-service date agreed to between Purchaser and the locomotive manufacturer. If such date was not so agreed to or cannot be determined, the three year term shall commence 90 days from the date of shipment by NYAB. Warranty does not apply to normal maintenance items in the System nor to components replaced pursuant to the warranty. (b) DB-60 Control Valve in Freight Brake Packages: Five years commencing on date of shipment by NYAB. (c) All other Equipment and Parts: One year commencing on date of shipment by NYAB, provided that any equipment or part manufactured by others but furnished by NYAB are warranted only to the extent of the warranty of the original manufacturer. In the event of a claim by Purchaser under this warranty within the applicable period, NYAB reserves the right to either inspect the equipment or part where located or require that Purchaser return same to NYAB. If NYAB determines that a defect exists in violation of such warranty, It shall have the option to repair or replace same at its expense or to give proper credit for same, provided that Purchaser returns the defective equipment or

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parts to NYAB. Purchaser is responsible for all costs of dismantling, reassembling, packaging and transportation. The foregoing warranty shall not apply to equipment that shall have been repaired after shipment to Purchaser by anyone except NYAB authorized employees, and NYAB will not be liable in any event for alterations or repairs except those made with its written consent. Purchaser shall be solely responsible for determining suitability for use, and NYAB shall in no event be liable in this respect. NYAB'S obligations hereunder shall not be enforceable until such equipment or parts have been fully paid for. THE FOREGOING WARRANTY AND OBLIGATIONS ARE IN LIEU OF ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES, INCLUDING NEGLIGENCE; AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSES, OR OTHERWISE, EXPRESSED OR IMPLIED IN FACT BY LAW; AND STATE NYAB'S ENTIRE AND EXCLUSIVE LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY FOR ANY CLAIM IN CONNECTION WITH THE SALE OR FURNISHING OF GOODS OR PARTS, THEIR DESIGN, SUITABILITY FOR USE, INSTALLATION, OR OPERATION. NYAB WILL IN NO EVENT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WHATSOEVER, AND ITS LIABILITY UNDER NO CIRCUMSTANCES WILL EXCEED THE CONTRACT PRICE FOR THE GOODS FOR WHICH LIABILITY IS CLAIMED.

14. PATENT LIABILITY We will not be liable for any claim of infringement unless due to infringement by goods manufactured by us in the form in which we supply such goods to you and without regard to their use by you. If you notify us promptly of any such claim of infringement, and, if we so request, authorize us to defend or settle any suit of controversy involving such claim, we will indemnify you against the reasonable expenses of any such suit and will satisfy any judgement or settlement in which we acquiesce, but only to an amount not exceeding the price paid to us for the allegedly infringing goods. If an injunction is issued against the further use of allegedly infringing goods, we shall have the option of procuring for you the right to use the goods, or replacing them with non-infringing goods, or modifying them so that they become non-infringing, or of removing them and refunding the purchase price. THE FOREGOING EXPRESSES OUR ENTIRE AND EXCLUSIVE WARRANTY AND LIABILITY AS TO PATENTS, AND WE WILL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER SUFFERED BY REASON OF ANY INFRINGEMENT CLAIMED, EXCEPT AS PROVIDED HEREIN. You will hold us harmless and indemnified against any and all claims, demands, liabilities, damages, costs, and expenses resulting from, or connected with, any claim of patent infringement arising out of the manufacture by us of goods in accordance with a design or specifications with which you furnish us. The sale of any goods hereunder does not carry with it any license to use such goods in combination with other goods not purchased from us or our licensees and which combination is the subject of any patent owned or controlled by us. Any invention made by us in the performance of a contract with you shall be our exclusive property.

15. LIABILITY Unless specifically agreed in writing, we do not warrant or represent that any of our products by themselves or in a system or with other equipment will conform to or comply with the provisions of the Occupational Safety and Health Act of 1970 and the standards and regulations issued thereunder, or any other federal, state, or local law or regulation of the same or similar nature.

16. INSPECTION AND TEST Inspection of goods in our plant by customer representatives will be permitted during normal working hours, providing same does not interfere with production and our prior written concurrence is obtained. Inspections or tests requested that are beyond our normal procedures shall, if acceptable to us, be performed at customer expense.

17. AUDITS, DRAWINGS, RECORDS, AND PROPRIETARY DATA Customer shall not have access to NYAB records, drawings and proprietary data unless specifically agreed to in writing by an authorized officer of NYAB.

18. JIGS, FIXTURES, AND PATTERNS Unless customer-supplied or specifically paid for under separate contract by the customer, all jigs, fixtures, and patterns shall remain the property of NYAB. NYAB shall retain the right to discard and scrap any such jigs, fixtures, or patterns at its discretion. Special jigs, fixtures, and/or patterns may be offered for sale to customer prior to scrapping.

19. ASSIGNMENT Your rights and obligations hereunder may not be assigned without our prior written consent.

20. NON-WAIVER Our failure at any time to require strict performance by you of any of the provisions herein shall not waive or diminish our right thereafter to demand strict compliance therewith or with any other provisions. Waivers of any default shall not waive any other default.

21. APPLICABLE LAW The rights and duties of the parties shall be governed by the laws of the State of New York.

www.nyab.com

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CORPORATION
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